

LUMP-SUM AGREEMENT FOR ARCHITECTURAL AND ENGINEERING SERVICES

Between

[]

Hereinafter Referred to as the “District”

AND

[]

Hereinafter Referred to as the “Architect”

DATE: _____

Final Version - February 21, 2001

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AGREEMENT FOR ARCHITECT SERVICES

A. DEFINITIONS

A-1. **DEFINED TERMS.** The following words and phrases, where appearing in initial capitalization, shall, for the purposes of this Agreement, have the following meanings:

- **ADDITIONAL SERVICES COMPENSATION.** Additional Services Compensation shall be the fees determined in accordance with Section G to be paid by the District to the Architect in connection with the performance of Additional Services as agreed to in advance, in writing, by the District.
- **ADDITIONAL SERVICES.** Additional Services shall consist of the architectural and engineering services agreed to be performed by the Architect in connection with the Project but which are not specifically designated as Basic Services in Section C. A listing of potential Additional Services is included in Section C.
- **BASIC SERVICES COMPENSATION.** Basic Services Compensation shall be the lump-sum fee designated in Section D to be paid by the District to the Architect in connection with the performance of the Basic Services by the Architect.
- **BASIC SERVICES.** Basic Services shall consist of the architectural and engineering services as described in Section C and as indicated to be performed and provided by the Architect under this Agreement in connection with the Project.
- **CONSTRUCTION CONTRACT DOCUMENTS.** The Construction Contract Documents shall consist of the plans and specifications prepared by the Architect, and any addenda and change orders thereto, and the District-Contractor agreement, all of which shall be compatible and consistent with this Agreement and with the District/Project Manager Contract.
- **CONTRACTOR.** The Contractor is the person or entity that enters into an agreement with the District to perform the construction of or any construction on the Project, including, without limitation, the providing of labor, materials, and equipment incorporated or to be incorporated into the Project. The term "Contractor" means the Contractor or its authorized representative, but excludes the Project Manager and the Architect.
- **DESIGN PHASE CHANGE ORDER.** A Design Phase Change Order is the form of documentation from the District approving and authorizing a modification to the Program, Budget, Management Plan, Master Schedule, or previously approved Design Phase documents.
- **DISTRICT/PROJECT MANAGER CONTRACT.** The School Facilities Board/Project Manager Contract is the agreement between the School Facilities Board and the Project Manager dated _____ for the performance of construction program management services on the Project.
- **LIST OF CRITICAL DATES.** The List of Critical Dates is a milestone calendar of events and activities, which prescribes the dates by which they must be accomplished in order to maintain the project schedule.

- **MASTER SCHEDULE.** The Master Schedule is a graphic display of the major activities, phases, construction packages, and key interfaces on a time scaled, precedence diagram.
- **OTHER DIRECT EXPENSES.** In connection with Additional Services, Other Direct Expenses are the actual expenditures made by the Architect, its employees, or its Professional Consultants in the interest of the Project, including but not limited to field office furniture, equipment, and utilities; all out-of-pocket expenses for travel and living expenses in connection with the Project; long-distance telephone; telex; expressage; computer time; printing costs, including five (5) sets of plans; photocopies; professional consultants (other than those required for the performance of the Basic Services); and document reproduction.
- **PROGRAM OF REQUIREMENTS.** The Program of Requirements or "Program" is the detailed written summary of the requirements of the facility, which sets forth the design objectives, constraints, and criteria, including space requirements and relationships, quality levels, flexibility and expandability, special equipment and systems, and site requirements, as described in Exhibit II.
- **PROJECT DOCUMENTS.** The Project shall be completed in accordance with the following Project Documents, which were prepared or approved by the District prior to the execution of this Agreement between the Architect and the District:
Architectural Services Request for Proposal, dated _____.
- **PROJECT.** The Project shall be designed in conformance with the Program of Requirements to be developed by the Architect in cooperation with District personnel, the Project Manager and community groups.
- **SERVICES.** The Services to be performed by the Architect under this Agreement shall consist of the Basic Services and any Additional Services both as defined herein.
- **WORK.** The Work shall consist of the total construction and related services (excluding the Services rendered by the Architect) performed on the Project.

B. RELATIONSHIP OF THE PARTIES

B-1. ARCHITECT SERVICES. The Architect shall provide professional architectural/engineering services for the Project in accordance with the terms and conditions of this Agreement. The Architect's performance of services shall be as professional consultant to the District to carry out the activities of Project design and construction administration and to provide the technical documents and supervision of the design team to achieve the District's Project objectives.

B-2. DISTRICT REPRESENTATIONS:

- a. The Project Manager is under separate contract with the School Facilities Board, working as agent to provide construction program management services. The Project Manager has no design responsibilities of any nature. None of the activities of the Project Manager supplant or conflict with the design, budget, or any other services and responsibilities customarily furnished by the Architect or subconsultants in accordance with generally

accepted architectural/engineering practices except as otherwise modified by this Agreement. The Architect understands and agrees that the Project Manager is the School Facilities Board's representative to the Architect and Contractor insofar as this Agreement is concerned. All instructions by the District to the Architect relating to services performed by the Architect will be issued or made through the Project Manager. All communications and submittals of the Architect to the District and Contractor shall be issued or made through the Project Manager unless the Project Manager shall otherwise direct. The Project Manager shall not unreasonably withhold approval for the Architect to communicate directly with the District or Contractor. The Project Manager shall have the authority to establish procedures, consistent with this Agreement, to be followed by the Architect and the Contractor and to call periodic conferences to be attended by the Architect, and the Architect's subconsultants, throughout the term of this Agreement, as described in Paragraph C-4.

- b. The Architect understands and agrees that it is not a third-party beneficiary of any contract between the District and the Project Manager or of their performance thereunder, and the Architect waives any rights, claims, or causes of action it may have as an alleged third-party beneficiary of any such contract or of the performance of the parties thereunder, and covenants not to sue the Project Manager as a third-party beneficiary of any such contract or of the performance of the parties thereunder.
- c. Nothing contained in this agreement shall create a contractual relationship with or a cause of action in favor of a third party against the District, the Project Manager, or the Architect.

B-3. ARCHITECT REPRESENTATION:

- a. The Architect shall provide a list of all consultants that the Architect intends to utilize relating to the Project. The list shall include such information on the qualifications of the consultants as may be requested by the District. The District, through the Project Manager, reserves the right to review the consultants proposed, and the Architect shall not retain a consultant to which the District, through the Project Manager, has a reasonable objection. The District shall pay the Architect any increased costs of obtaining the services of consultants to replace those rejected by the District.

- b. The Architect shall provide to the District, through the Project Manager, a list of the proposed key project personnel of the Architect and its consultants to be assigned to the Project. This list shall include such information on the professional background of each of the assigned individuals as may be requested by the District, through the Project Manager. Such key personnel and consultants shall be satisfactory to the District and shall not be changed except with the consent of the District. The District's approval of substituted personnel shall not be unreasonably withheld.

B-4. **DIVISION OF RESPONSIBILITIES/SERVICES.** The Architect understands and agrees that if the Project Manager should provide the Architect with any estimating assistance, cost or time control recommendations, or other consultation, recommendations, or suggestions, any or all such activities on the part of the Project Manager or any other representative of the District shall in no way relieve the Architect of the responsibility of fulfilling its obligations and responsibilities under this Agreement.

C. BASIC SERVICES

C-1. SCOPE OF SERVICES:

- a. The Basic Services to be provided by the Architect shall be performed in the phases described hereinafter and shall include architecture, landscape architecture, civil engineering, structural engineering, mechanical engineering, electrical engineering, as applicable, furnished by an architect/engineer and its consultants in accordance with generally accepted architectural and engineering practices consistent with the terms of this Agreement, and specifically identified and described in Section Q.
- b. This Agreement describes the Architect's Basic Services in seven (7) phases. Each of these phases (Pre-Design, Schematic Design, Design Development, Construction Documents, Bid/Award, Construction, and Post-Construction) may be divided to facilitate bidding of separate trade contracts or phased construction activities. The District shall have the right to determine early, late, and other separate contract awards and may modify the number and times of issue of various contract document packages at no additional compensation to the Architect, as long as there are no more than three document packages for each project (which packages are exclusive of individual material purchase orders, bid

package alternates, and rework by the Architect of documents already completed).

**C-2. ARCHITECT'S PROFESSIONAL RESPONSIBILITY
AND STANDARD OF CARE:**

- a. By execution of this Agreement, the Architect warrants that (a) it is an experienced architectural firm having the skill and the legal and professional ability necessary to perform the Services required of it under this Agreement in connection with the design and construction of a project having the scope and complexity of the Project contemplated herein; (b) it has the capabilities and resources necessary to perform its obligations hereunder; and (c) it is familiar with all current laws, rules, and regulations applicable to the design and construction of the Project (such laws, rules, and regulations, including, but not limited to, all local ordinances, requirements of building codes of city, county, state, and federal authorities that are applicable to the Project, local sanitary laws and rules and regulations, and orders and current interpretations by governing public authorities of such ordinances, requirements, laws, rules, and regulations in effect at the time of commencement of services on the Project), and that the Architect shall endeavour to prepare drawings, specifications, and other documents in accordance with such laws, rules, and regulations. Nothing contained in this Agreement shall require the Architect to perform beyond the accepted standard of care for professionals engaged in projects of similar scope in the State of Arizona.
- b. The Architect hereby represents and agrees that the drawings, specifications, and other documents prepared by it pursuant to this Agreement shall be complete and functional for the purposes intended, except as to any deficiencies that are due to causes beyond the control of the Architect, and that the Project, if constructed in accordance with the intent established by such drawings, specifications, and other documents, shall be a facility suitable for the purposes for which it is intended.
- c. The Architect shall be responsible for any negligence that creates errors, inconsistencies, or omissions in the drawings, specifications, and other documents. The Architect will correct and pay to the District any contractor and/or related costs for all errors and omissions in the drawings, specifications, and other documents prepared by the Architect. The Architect further agrees, at no additional cost, to render assistance to the District in

resolving problems relating to the design or specified materials that result from the errors and/or omissions of the Architect.

However, in the case of omissions, the Architect will not be responsible to pay for the value of the work that would have been included in the bid if the omission had not occurred. The Architect remains responsible for all other costs required to incorporate the omission into the Work at the time of correction.

- d. It is the responsibility of the Architect to make certain that all appropriate approvals are obtained from federal, state and local governments, which shall be paid for by the district at actual cost.
- e. The Architect will verify through information normally available for the design and construction of a project of this nature that no products or materials containing asbestos are specified or required by the Drawings or other Documents provided by the Architect. No provision of this Agreement requires the Architect to engage in or provide asbestos testing services for any product or material specified for this project.

C-3. PROJECT REQUIREMENTS:

- a. The Construction Contract Award Price (CCAP) shall be the total cost or estimated cost to the District of all elements of the Project designed or specified by the Architect.
 - 1. The CCAP shall include the cost at current market rates of labor and materials designed, specified, selected, or specially provided for by the Architect, plus a reasonable allowance for the Contractor's overhead and profit. In addition to the CCAP, the District will maintain contingencies for market conditions at the time of bidding and for changes in the Work during construction.
 - 2. The CCAP does not include the compensation of the Architect and its subconsultants, the costs of the land, rights-of-way, financing, or other costs that are the responsibility of the District as provided in Section F.
- b. Attached hereto and made a part of this Agreement as Exhibit I is the Design, Construction, and Equipment Budget, a component of which is the Project Construction Budget. The Project Construction Budget shall be defined as the total cost of constructing the Project as illustrated in Exhibit I hereto. A

component of the Project Construction Budget is the Construction Contract Award Price, hereinafter referred to as CCAP. The CCAP for this Project, or designated portion thereof, may be modified in writing only in the form of a Design Phase Change Order, executed by the District, the Project Manager, and the Architect. The Architect shall prepare drawings, specifications, and other documents necessary so that the construction contract bid from a responsive, responsible contractor, acceptable to the District and the Project Manager, will be within the CCAP.

1. During all phases of the Project the Architect shall prepare such estimates as it deems necessary, at no additional cost to the District, to assure itself that the estimated Project cost is within the CCAP.
2. With each Design Phase submittal to the District, the Architect shall make the following statement in writing: "The drawings, specifications, and other documents submitted herewith, in my/our professional opinion, fulfill the Program of Requirements for deficiencies and corrections, and the work indicated by them may be purchased by the District in a construction contract or contracts, the total price of which (CCAPs) will not exceed \$_____ (based on a bid date no later than _____) and may be constructed completely within said contract price and within progress contingency fund of ____% of said price. Further, in my/our professional opinion, the above-mentioned documents submitted herewith have been prepared in accordance with the Lump-Sum Agreement for Architectural Services."
 - (a) Each design phase submittal of the Architect to the District shall, in the Architect's professional opinion, fulfill the Program of Requirements and shall be prepared in accordance with the Architectural Services Agreement.
 - (b) Evaluations of the District's Project Budget, preliminary estimates of Construction Cost, and detailed estimates of Construction Cost, if any, prepared by the Architect represent the Architect's judgment as a design professional familiar with the construction industry. It is recognized, however, that neither the Architect nor the District has control over the cost of labor, materials, or equipment, over the Contractor's methods of determining bid prices, or over competitive bidding, market, or

negotiating conditions. Accordingly, the Architect cannot and does not warrant that bids or negotiated prices will not vary from the CCAP or from any estimate of Construction Cost or evaluation prepared by or agreed to by the Architect.

- (c) Should it become apparent at any Design Phase submittal that in meeting the Program of Requirements, the Architect's construction cost estimate exceeds the CCAP, the District shall give written approval of an increase in the CCAP, or assist the Architect in reducing project scope and quality, and/or authorize redesign of the project to meet the CCAP. Approval by the District of scope reduction and redesign will not be unreasonably withheld.
- 3. Should first bidding or negotiation produce prices in excess of the approved CCAP, the Architect shall be responsible for rebidding, renegotiation, and redesign, at no additional expense to the District, as may be necessary to obtain price(s) within the approved CCAP or price(s) acceptable to the District. The District will assist in reducing project scope or quality, and/or redesign decisions as necessary to reduce the project cost. All redesign and scope reduction must be approved by the District, whose approval will not be unreasonably withheld.
- c. Incorporated herein and made a part of this Agreement by reference as Exhibit II is the Program of Requirements, which defines the physical and environmental parameters for the Project and establishes the design objectives and criteria. No deviations from the Program of Requirements shall be allowed without written approval for change, in the form of a Design Phase Change Order executed by the District, Project Manager, and Architect.
- d. Incorporated herein and made a part of this Agreement by reference as Exhibit III is the Master Schedule and the List of Critical Dates, which defines the sequence and timing of the design and construction activities. The Architect shall follow this schedule in the performance of its services.
- e. No deviation from the Master Schedule or Critical Dates shall be allowed without written approval, in the form of a Design Phase Change Order executed by the District, Project Manager, and

Architect. Should the District and Project Manager determine that the Architect is behind schedule due to the Architect's fault, the Architect shall expedite and accelerate its efforts, including additional manpower and/or overtime, to maintain the approved design schedule at no additional cost to the District.

C-4. PROJECT CONFERENCES:

- a. Throughout all phases of the Project, the Architect and, as needed, its consultants shall meet periodically with the District and Project Manager when reasonably requested. Attendees shall be as mutually determined by the District, Project Manager, and Architect. As a minimum, regularly scheduled meetings that the Architect will attend include:
 1. Architect Orientation.
 2. Predesign conferences on an as-needed basis.
 3. Design Progress Review conferences as needed or on a weekly basis. Attempts will be made to schedule the design conferences on the same day of the week.
 4. Prebid conference for each construction contract.
 5. Preconstruction conference for each construction contract.
 6. Construction progress meetings on a weekly basis for each construction contract.
 7. Substantial Completion, Final Completion, and completion of warranty period inspections for each construction contract.
- b. The Architect shall be responsible for scheduling and attending any meetings necessary to properly coordinate the design effort, including, without limitation, meetings with governing agencies, code officials, and applicable utilities.

C-5. INTERNET COMMUNICATIONS REQUIREMENTS:

- a. The School Facilities Board has directed the use of an Internet/web-based project management software to track and manage the project. Each project team member shall have access to the Internet and an Internet e-mail address in order to communicate with various team members. The Architect shall provide, immediately upon receipt of this Agreement,

confirmation of these conditions and the names, positions, and e-mail addresses to Heery International, School Facilities Board Internal Coordinator.

- b. The Architect shall provide an adequate number of users to properly manage the project in accordance with the project schedule.
- c. ***Software requirements:***
 - 1. A 32-bit operating system such as Windows 95 or Windows NT.
 - 2. An Internet browser that supports HTML 1.1, tables, cookies, JavaScript, and frames.
 - 3. Internet Explorer 5.0 or Netscape.
- d. ***Hardware requirements:***
 - 1. Pentium-based (or equivalent) workstation or laptop.
 - 2. A connection to the Internet (48.8 baud or faster).
- e. All costs associated with using this system for the Architect and its consultants, excluding computer hardware requirements, and software requirements listed above, are the responsibility of the School Facilities Board.
- f. The School Facilities Board encourages the Architect to utilize the project management software for communication with its consultants.

D. COMPENSATION

D-1. BASIC SERVICES COMPENSATION

- a. The District shall compensate the Architect in accordance with the terms and conditions of this Agreement, including the following:
 - 1. For the Basic Services of the Architect, Basic Services Compensation shall be in the lump-sum amount of \$_____.

2. The Basic Services Compensation includes all compensation and other payments due the Architect (for manpower, overhead, profit, and all direct expenses) in the performance of the Basic Services.

D-2. PAYMENTS TO THE ARCHITECT. Payments on account of the Architect shall be made as follows:

- a. Payments for Basic Services shall be made monthly in proportion to services performed so that the compensation at the completion of each Phase shall equal the following percentages of the Basic Services Compensation:

Pre-Design Phase	3%
Schematic Design Phase	12%
Design Development Phase	20%
Construction Documents Phase	40%
Bidding or Negotiations Phase	3%
Construction Phase	19%
Post-Construction Phase (upon satisfactory final completion)	3%

- b. No deductions shall be made from the Architect's Basic Services Compensation on account of penalty, liquidated damages, retainage, or other sums withheld from payments to Contractors, or on account of the cost of changes in the construction contract work other than those for which the Architect has been found liable.
- c. If the Project is suspended for more than six months or abandoned in whole or in part by the District, the Architect shall be paid compensation for services performed prior to receipt of written notice from the District of such suspension or abandonment, and all reasonable termination expenses resulting from such suspension or abandonment. If the Project is resumed after being suspended for more than six months, the Architect's Basic Services Compensation shall be equitably adjusted.
- d. Payments are due and payable thirty (30) days from the date of receipt of the Architect's invoice.

D-3. ADDITIONAL SERVICES COMPENSATION:

- a. With respect to any Additional Services, as described in Section G herein, performed by the Architect hereunder, the Architect and District shall negotiate an equitable adjustment to the Basic

Services Compensation. However, if negotiations are not successful prior to the time the Additional Services are needed, the District may direct the Architect to proceed with the Additional Services on a time-spent basis, with Additional Compensation Services to be computed as follows:

1. Principal's time at the fixed rate of \$_____ per hour. For the purposes of this agreement, the Principals are:

(a) _____

(b) _____

(c) _____

2. Employee's time at the following hourly rates:

Principal	\$_____
Project Architect	\$_____
Architectural Designer	\$_____
Technical Administrator	\$_____
CAD Drafter	\$_____
Clerical (Secretary/Reception)	\$_____

3. For consultants of the Architect, including, but not limited to, additional structural, mechanical, and electrical engineering services as defined in Section G, a multiple of one hundred ten percent (110%) of the consultant's hourly rates, attached, and other consultant's hourly rates to be negotiated with the District and billed to the Architect for such services.

4. Reimbursable Expenses incurred while performing Additional Services shall be computed at a multiple of one hundred ten percent (110%) of actual cost. Reimbursable Expenses shall include expense of renderings or models for the District's use over and above those provided for in Basic Services, if authorized in advance by the District. Before incurring any Reimbursable Expenses, the Architect must request and receive written authorization from the District.

- b. Payments for Additional Services of the Architect shall be made monthly upon presentation of the Architect's statement of services, fully supported by invoices, time cards, and other documentation as requested by the District.

D-4. ACCOUNTING RECORDS:

- a. Records of the Architect with respect to Additional Services and payroll, consultant, and other expenses (including Reimbursable Expenses) pertaining to the Project shall be kept on generally accepted accounting principals and shall be available to the District or its authorized representative for inspection and copying at mutually convenient times.
- b. At the request of the District or its authorized representative, the Architect will supply, in a timely manner and certify as accurate, unaltered copies of all time sheets, invoices, and other documents to substantiate and document any and all Additional Services and Reimbursable Expenses.

E. PERIOD OF SERVICE

- E-1. Specific dates relating to the period of services are set forth Exhibit III, Master Schedule/Critical Dates List.
- E-2. Unless earlier terminated as provided in Section K hereof, this Agreement shall remain in force for one (1) year, with option to renew each year for a total time of contract not to exceed five (5) years. No contract will exist unless and until a purchase order is issued each fiscal year. However, the provisions of the Agreement relating to Professional Responsibility (Section C-3); Dispute Resolution (Section L); Professional Liability coverage (Section I); Indemnification (Section J); and Ownership of Documents/Confidential Information (Section N) shall remain in effect after termination of the other provisions of the Agreement.
- E-3. If the Project is delayed through no fault of the Architect, all specific dates that are affected by the delay will be adjusted by the number of calendar days of the delay.
- E-4. If the District materially revises the Project, a reasonable time extension and/or credit shall be negotiated between the Architect and the District.

F. DISTRICT'S RESPONSIBILITIES

- F-1. The District, in conjunction with the School Facilities Board, shall provide full information regarding the requirements for the Project.
- F-2. The District, in conjunction with the School Facilities Board, shall examine documents submitted by the Architect and shall render

decisions pertaining thereto promptly, to avoid unreasonable delay in the progress of the Architect's Services.

- F-3. The District shall furnish a certified land survey of the site if required, giving as applicable, grades and lines of streets, alleys, pavements, and adjoining property; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries, and contours of the site; and locations, dimensions, and complete data pertaining to existing buildings, other improvements, and trees.
- F-4. The District shall contract and pay for the services of a soils engineer or other consultant, when such services are deemed necessary by the Architect or Project Manager, to provide reports, test borings, test pits, soil-bearing values, percolation tests, air and water pollution tests, ground corrosion and resistivity tests, and other necessary operations for determining subsoil, air, and water conditions, with appropriate professional interpretations thereof.
- F-5. The District shall pay for structural, mechanical, chemical, and other laboratory tests, inspections, and reports as required by law that are not otherwise called for in this Agreement.
- F-6. The District shall furnish such legal, accounting, and insurance counseling services as the District may deem necessary for the Project, and such auditing services as it may require to ascertain how, or for what purposes, the Contractor has used the moneys paid to it under the Construction Contract.
- F-7. All services, information, surveys, and reports required of the District shall be furnished at the District's expense, and the Architect shall be entitled to rely upon their accuracy and completeness.
- F-8. The District shall furnish information and approvals required of it expeditiously, for orderly progress of the Work, and shall endeavor to adhere as closely as possible with the time conditions for such District activities as set forth in all approved schedules for the Project.
- F-9. Prompt written notice shall be given by the District to the Architect if the District becomes aware of any fault or defect in the Project or nonconformance with the Contract Documents.
- F-10. The proposed language of certificates or certifications requested of the Architect or Architect's consultants shall be submitted to the Architect for review and approval at least 14 days prior to execution. The

District shall not request certifications that would require knowledge or services beyond the scope of this Agreement.

G. ADDITIONAL SERVICES

- G-1. Section Q is the list of services that exceed the Scope of Basic Services under this Agreement. If any of these Additional Services are authorized in advance by the District in writing, the Architect shall provide or obtain from others the authorized services.
- G-2. The District will compensate the Architect for authorized Additional Services performed as herein provided to the extent that they exceed the obligations of the Architect under this Agreement.

H. NOTICES:

- H-1. Any notice required by this Agreement or other communications to either party by the other shall be in writing and shall be deemed given when either (a) delivered personally or (b) five (5) days after deposit in the United States Post Office, postage prepaid certified mail, return receipt requested, addressed as follows (or to such other address as shall be duly given by notice meeting the requirement of this Section H):

- a. ***To District:***

- [District Name]
 - [Address]
 - [City, State, Zip]
 - Attention:

- b. ***To Architect:***

Attention: _____

- c. ***To Project Manager:***

Attention: _____

I. INSURANCE

- I-1. The Architect shall purchase and maintain insurance for protection from claims under worker's compensation acts; claims resulting from negligent acts or omissions for damages because of bodily injury, including personal injury, sickness, disease, or death of any of the Architect's employees or any other person; claims for damages because of injury to or destruction of personal property, including loss of use resulting therefrom; and claims arising out of the performance of this Agreement and caused by negligent acts or omissions for which the Architect is legally liable. Minimum limits of coverage shall be:

Description	Minimum Required Coverage
Worker's compensation	Statutory
Public liability Bodily injury—each person Bodily injury—each accident Property damage—each accident	\$1,000,000 combined limit
Automobile liability and property damage Bodily injury—each person Bodily injury—each accident Property damage—each accident	\$1,000,000 combined limit \$500,000 for each occurrence
Professional liability	\$1,000,000 per loss/claim \$1,000,000 annual aggregate

- I-2. Evidence of such insurance shall be furnished to the District, and the District shall receive thirty (30) days' prior written notice of any cancellation, nonrenewal, or reduction of coverage of any of the policies. Upon notice of such cancellation, nonrenewal, or reduction, the Architect shall procure substitute insurance so as to assure the District that the minimum limits of coverage are maintained continuously throughout the period of this Agreement.
- I-3. The Architect shall deliver to the District a certificate of insurance for its Professional Liability coverage annually, as long as it is required to maintain such coverage under paragraph I-5.
- I-4. All insurance policies (with the exception of worker's compensation and professional liability) required under this Agreement shall name the District as an additional insured for the insurance and shall contain a waiver of subrogation against the District.

- I-5. The Architect shall maintain in force during the performance of this contract and for two (2) years after final completion of the Project, the professional liability insurance coverage referenced above.

J. INDEMNIFICATION

- J-1. The Architect shall indemnify and save harmless the District from and against all claims, suits, actions, liability, loss, damage, and expense arising from any negligent act or negligent omission of the Architect or any subcontractor of the Architect under this Agreement or any of their respective agents or employees in connection with the performance of this Agreement.
- J-2. Except as otherwise set forth in this Agreement, the Architect and the District shall not be liable to each other for any delays in the performance of their respective obligations and responsibilities under this Agreement that arise from causes beyond their control and without their fault or negligence, including but not limited to any of the following events or occurrences: fire, flood, earthquake, epidemic, atmospheric condition of unusual severity, war, state or local government acting in its sovereign capacity, and strikes. The District shall not be liable to the Architect for acts or failures to act by the Project Manager, the Contractor or the District's consultants.

K. TERMINATION OF AGREEMENT

- K-1. The Architect may, upon fifteen (15) day's additional written notice to the District, terminate this Agreement, without prejudice to any right or remedy otherwise available to the District, and recover from the District payment for all services performed to the date of the notice terminating this Agreement if:
- a. The District abandons the Project or the Project is stopped for more than six (6) months due to actions taken by the District, or under an order of any court or other public authority having jurisdiction, or as a result of an act of government, such as a declaration of a national emergency making materials unavailable through no act or fault of the Architect or its agents or employees;
or
 - b. The District has failed to substantially perform in accordance with the provisions of this Agreement due to no fault of the Architect and such nonperformance continues without cure for a period of thirty (30) days after the District receives from the Architect a written notice of such nonperformance (including a

detailed explanation of the actions of the District required for cure).

K-2. A.R.S. 38-511, relative to cancellation of political subdivisions and state contracts, requires, in part:

A. The state, its political subdivisions or any department or agency of either may, within three years after its execution, cancel any contract, without penalty or further obligation, made by the state, its political subdivisions, or any of the departments or agencies of either if any person significantly involved in initiating, negotiating, securing, drafting or creating the contract on behalf of the state, its political subdivisions or any of the departments or agencies of either is, at any time while the contract or any extension of the contract is in effect, an employee or agent of any other party to the contract in any capacity or a consultant to any other party of the contract with respect to the subject matter of the contract.

B. Leases of state trust land for terms longer than ten years cancelled under this section shall respect those rights given to mortgagees of the lessee by section 37-289 and other lawful provisions of the lease.

C. The cancellation under this section by the state or its political subdivisions shall be effective when written notice from the governor or the chief executive officer or governing body of the political subdivision is received by all other parties to the contract unless the notice specifies a later time.

D. The cancellation under this section by any department or agency of the state or its political subdivisions shall be effective when written notice from such party is received by all other parties to the contract unless the notice specifies a later time.

E. In addition to the right to cancel a contract as provided in subsection A of this section, the state, its political subdivisions or any department or agency of either may recoup any fee or commission paid or due to any person significantly involved in initiating, negotiating, securing, drafting or creating the contract on behalf of the state, its political subdivisions or any department or agency of either from any other party to the contract arising as the result of the contract.

K-3. Upon the appointment of a receiver for the Architect, or if the Architect makes a general assignment for the benefit of creditors, the District may terminate this Agreement, without prejudice to any right or remedy otherwise available to the District, upon giving three (3) working days' written notice to the Architect. If an order for relief is entered under the bankruptcy code with respect to the Architect, the District may terminate this Agreement by giving three (3) working days' written notice to the Architect unless the Architect or the trustee:

- a. Promptly cures all breaches.
 - b. Provides adequate assurances of future performance.
 - c. Compensates the District for actual pecuniary loss resulting from such breaches.
 - d. Assumes the obligations of the Architect within the statutory time limits.
- K-4. If the Architect persistently or repeatedly refuses or fails, except in cases for which extension of time is provided, to supply sufficient properly skilled staff or proper materials, or persistently disregards laws, ordinances, rules, regulations, or orders of any public authority jurisdiction, or otherwise substantially violates or breaches any term or provision of this Agreement, and such nonperformance or violation continues without cure for thirty (30) days after the Architect receives from the District written notice of such nonperformance or violation, then the District may, upon fifteen (15) days' additional notice, without prejudice to any right or remedy otherwise available to the District, terminate this Agreement.
- K-5. Upon termination of this Agreement by the District under Paragraph K-2 or K-3, the District shall be entitled to furnish or have furnished the Services to be performed hereunder by the Architect by whatever method the District may deem expedient. Also, in such case, the Architect shall not be entitled to receive any further payment until completion of the Work; and the total compensation to the Architect under this Agreement shall be the amount that is equitable under the circumstances. If the District and the Architect are unable to agree on the amount to be paid under the foregoing sentence, the District shall fix an amount, if any, that it deems appropriate in consideration of all of the circumstances surrounding such termination, and shall make payment accordingly. The Architect may dispute the District's assessment of the termination amount by any method of dispute resolution permitted under this Agreement.
- K-6. The District may, upon thirty (30) days' written notice to the Architect, terminate this Agreement, in whole or in part, at any time for the convenience of the District, without prejudice to any right or remedy otherwise available to the District. Upon receipt of such notice, the Architect shall immediately discontinue all services affected unless such notice directs otherwise. In the event of a termination for convenience of the District, the Architect's sole and exclusive right and remedy shall be to be paid for all work performed

and to receive equitable adjustment for all work performed through the date of termination. The Architect shall not be entitled to be paid any amount as profit for unperformed services or consideration for the termination of convenience by the District.

- K-7. Should the District terminate the services of the Architect as provided for under this Section K, the District will acquire such drawings, including the ownership and use of all drawings, specifications, documents, and materials relating to the Project prepared by or in the possession of the Architect. The Architect will surrender to the District in a timely manner and in good, unaltered condition all original drawings, specifications, documents, and materials. In such event, the District shall be entitled to use such drawings, specifications, documents, and materials only for the District's completion and occupancy of the Project.
- K-8. The payment of any sums by the District under this Section K shall not constitute a waiver of any claims for damages by the District for any breach of the Agreement by the Architect.

L. DISPUTE RESOLUTION

- L-1. If a dispute arises out of or related to this Agreement, or its alleged breach, and if that dispute has not been settled through direct discussions within a reasonable period, the parties to this Agreement agree to settle the dispute before a judicial forum. Each party further agrees that it will endeavor to follow a similar dispute resolution procedure to resolve any disputes against any third parties (including the Contractor and Project Manager) that may arise out of or relate to the work.
- L-2. In the event of any suit, action, or other proceeding to enforce or interpret the terms of this Agreement, the prevailing party, at trial and on appeal or in any bankruptcy proceeding, shall be entitled to recover reasonable attorney's fees.

M. SUCCESSORS/ASSIGNMENT

- M-1. This Agreement shall inure to the benefit of and be binding on the heirs, successors, assigns, trustees, and personal representatives of the District, as well as the permitted assigns and trustees of the Architect.
- M-2. Neither party shall assign, sublet or transfer its interest in this Agreement without the written consent of the other, except that the

Architect may assign accounts receivable to a commercial bank or financial institution for securing loans, without prior approval by the District.

**N. OWNERSHIP OF
DOCUMENTS/CONFIDENTIAL
INFORMATION**

- N-1. The District acknowledges the Architect's construction documents as instruments of professional service. Nevertheless, the plans and specifications prepared under this Agreement shall become property of the District upon completion of the work and payment in full of all monies due to the Architect. Architect shall not use the drawings and specifications, therefore, for any purpose not related to the Project without District's consent. The District shall not reuse or make any modification to the plans and specifications without the prior written authorization of the Architect. The District agrees to the fullest extent permitted by law, to indemnify and hold the Architect harmless from any claim, liability or cost (including reasonable attorneys fees and defense cost) arising or allegedly arising out of any unauthorized reuse or modification of the construction documents by the District or any person or entity that acquires or obtains the plans and specifications from the or through the District without the written authorization of the Architect.
- N-2. For the Architect to fulfill this Agreement effectively, it may be necessary or desirable for the District to disclose to the Architect confidential and proprietary information and trade secrets pertaining to the District's past, present, and future activities. The Architect hereby agrees to treat any and all such information gained by it as a result of the Services performed hereunder as strictly confidential. The Architect further agrees that it will not disclose to anyone outside of the authorized Project team (a) the District's trade secrets during the period of this Agreement or thereafter or (b) the District's confidential and proprietary information during the period of this Agreement and thereafter for a period of two (2) years.

O. ADDITIONAL PROVISIONS

- O-1. Whenever renderings, photographs of renderings, photographs of models, photographs, drawings, announcements, or other illustration or information of the Project are released for public information, advertisement, or publicity, appropriate and proper credit for

architectural and other services shall be given to the Architect and the Project Manager, respectively.

- O-2. This Agreement, together with its Exhibits and Attachments, represents the entire and integrated agreement between the District and the Architect and supersedes all prior negotiations, representations, or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both the District and the Architect.
- O-3. Unless otherwise specified, this Agreement shall be governed by the law of the State of Arizona.
- O-4. If for any reason any one or more of the provisions contained in this Agreement shall be held invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provisions thereof, and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.
- O-5. Except where specifically stated otherwise, all periods of time stated in terms of days shall be considered periods calculated in calendar days.
- O-6. The headings or captions within this Agreement shall be deemed set forth in the manner presented for the purposes of reference only and shall not control or otherwise affect the information set forth therein or interpretation thereof.
- O-7. For the purpose of this Agreement, unless the context clearly indicates otherwise, the singular includes the plural and the plural includes the singular.
- O-8. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, and the counterparts shall constitute one and the same instrument, which shall be sufficient evidence by any one thereof.
- O-9. Unless otherwise provided in this Agreement, the Architect and the Architect's consultants shall have no responsibility of the discovery, presence, handling, removal, or disposal of (or exposure of persons to) hazardous materials in any form at the Project site, including but not limited to asbestos, asbestos products, polychlorinated biphenyl (PCB), or other toxic substances.

- O-10. The Architect shall have the right to include representations of the design of the Project, including photographs of the exterior and interior, among the Architect's promotional and professional materials. The Architect's materials shall not include the District's confidential or proprietary information if the District has previously advised the Architect in writing of the specific information considered by the District to be confidential or proprietary.

P. SCOPE OF SERVICES

- P-1. The Basic Services to be performed by the Architect, listed below, consist of professional tasks that have as their objective the design, technical documents, and construction administration to provide the District with a complete and properly functioning facility. The Basic Services shall be performed in accordance with the standard of care set forth in this Agreement. The facility shall meet the Program of Requirements and comply with applicable codes and laws, and shall be completed on a timely basis within the approved construction budget. The services are described under the Project Phases in which they customarily occur. This order is for convenience only and does not necessarily reflect the sequence in which any services will actually be performed, or necessarily limit the Project, or a designated portion of the Project, to one of each Phase. These Phases may be divided to facilitate the procurement of segregated portions of the Work. The District reserves the right to designate the phasing of segregated portions of the Work, within the terms and conditions of this Agreement.

P-2. PRE-DESIGN PHASE:

- a. The Architect shall examine and analyze available information provided by the District and Project Manager and shall advise and recommend as to additional information necessary to begin specific design work on the Project. In addition, the Architect shall be responsible for completing the development of the Program of Requirements for the project.
- b. Upon analysis of all available information and prior to initiating any design tasks, the Architect shall participate in a Pre-Design Project Analysis on the dates specified in the List of Critical Dates or as may subsequently be approved. The Architect shall have in attendance the individuals who will represent the primary architectural and engineering disciplines on the project and others as may be requested by the Project Manager. The Project

Manager, in conjunction with the Architect, shall take and transcribe minutes of the sessions.

- c. Upon conclusion of the Pre-Design Project Analysis, and in accordance with the List of Critical Dates, the Architect shall prepare a report to the District (hereinafter referred to as the "Design Narrative"), which is the Architect's interpretation of the Project requirements, design parameters and objectives, and results of the Pre-Design Project Analysis. As appropriate, the Design Narrative will contain diagrammatic studies and pertinent text relative to design concept; Program of Requirements; internal functions; human, vehicle, and material flow patterns; general space allocations; detailed analysis of operating functions; studies of adjacency, vertical and horizontal affinities; and outline descriptions of major building components and systems.
- d. The Architect shall assist and coordinate with the District and the Project Manager in securing necessary land-use permit(s).

P-3. SCHEMATIC PHASE:

- a. Upon written authorization from the District to proceed and, based on the approved Design Narrative, the Project Construction Budget, and the Program of Requirements (Exhibits I and II), the Architect shall prepare Schematic Design Studies consisting of drawings and other documents illustrating the design concept, scale, and relationship of the Project components for approval by the District.
- b. The Architect shall periodically provide to the Project Manager copies of Schematic Design Studies for the Project Manager's review during the Schematic Design Phase. At the end of the Schematic Design Phase the Architect shall provide the Project Manager with six (6) complete sets of the drawings and other documents for approval by the District.
- c. Documents prepared by the Architect for final Schematic Design Phase submittal shall include drawings and a written report. The drawings shall include, but not be limited to, a proposed site utilization study of the property of the Project, schematic plans of all floor plan conditions, and simplified elevations indicating the fundamentals of the architectural concept. The report shall incorporate the Design Consultant's Construction Contract(s) Award Price(s) (CCAP) estimate and breakdown. The Architect shall prepare such estimates as it deems necessary to assure itself

that the project cost is within the CCAP. Further, the report shall include such discussion of design factors, if any, as are pertinent, in the opinion of the Architect, and outline descriptions of proposed engineered systems, construction methods, materials and work to be included in the construction contracts.

- d. To be considered acceptable for final Schematic Design Phase submittal, the documents shall contain, as a minimum:

1. *Architectural:*

- (a) Drawings showing complete building layout, identifying the various major areas, core areas, and their relationships.
- (b) Preliminary exterior wall cross section and elevation, indicating location and size of fenestration, and indicating overall thermal transfer value for exterior wall envelope.
- (c) Food service floor plans, with preliminary equipment listings.
- (d) Identification of roof system, deck, membrane, and drainage technique and indicating overall combined heat-transfer coefficient for roof/ceiling composite and roof area.
- (e) Identification of all proposed finishes (includes all exterior surfaces, doors, and windows).
- (f) Site plan, with building located, and overall grading plan with a minimum of 5'-0" contour lines. All major site development, such as access road paving, walls and outside support buildings, and paved parking lots should be shown.
- (g) Building code and land-use zoning analysis.
- (h) Gross and net area calculations separated to show conformance with the Program of Requirements.

2. *Structural:*

- (a) Structural systems layout, with overall dimensions and floor elevations. Identification of structural system

(precast, structural steel with composite deck, structural steel with bar joists, etc.).

- (b) Identification of foundation requirements (fill requirements, piles, caissons, spread, footings, etc.).

3. *Mechanical:*

- (a) Block heating, ventilating, and cooling loads calculations, including skin versus internal loading.
- (b) Minimum of two HVAC systems that appear compatible with loading conditions for subsequent life-cycle costing.
- (c) Location of major equipment spaces.

4. *Electrical:*

- (a) Lighting fixtures outlined in plan and roughly scheduled showing types and quantities of fixtures to be used.
- (b) Major electrical equipment roughly scheduled, indicating size and capacity.
- (c) Complete preliminary one-line electrical distribution diagrams, with indications of final location of service entry, switchboards, motor control centers, panels, transformers, and emergency generator, if required.
- (d) Legend, showing all symbols used on drawings.

- 5. Cost estimate in C.S.I. format, with detail consistent with the level of detail of the drawings and specifications.

- e. Upon District acceptance and approval of the Schematic Design, the structural bay sizes, floor elevations, and exterior wall locations (building “footprint”) may not be changed except by a Design Phase Change Order.

P-4. DESIGN DEVELOPMENT PHASE:

- a. The Architect shall prepare from the approved Schematic Design Studies, for further approval by the District, the Design Development Documents, consisting of drawings and other documents, to fix and describe the size and character of the entire

Project as to structural, mechanical, and electrical systems; materials; and such other essentials as may be appropriate.

- b. Design Development Documents prepared by the Architect shall include drawings and a written report in more detail than the Schematic Design Documents, and shall take into account the District's comments on the previous submittal. Drawings shall include dimensioned site development plan, floors plans, elevations, and one or more typical sections indicating proposed construction. Drawings shall also include information on major finishes as well as diagrammatic drawings illustrating fundamentals of major engineered systems, i.e., structural, mechanical, and electrical.
- c. The Architect shall provide the Project Manager periodically with copies of in-progress Design Development Documents (not to exceed the equivalent of six [6] sets of plans) during the Design Development Phase. At the end of the Design Development Phase the Architect shall provide the Project Manager with six (6) complete sets of drawings and other documents for approval by the District. The documents for this final Design Development Phase submittal shall consist of, as a minimum:

1. *Architectural:*

- (a) Floor plans, with final room locations, including all openings, with rooms identified by name and number.
- (b) Wall sections showing final dimensional relationships, materials, and component relationships.
- (c) Interior elevation and sections.
- (d) Identification of all fixed and loose equipment to be installed in the construction contract.
- (e) Finish schedule, identifying all finishes.
- (f) Functional interior signage.
- (g) Preliminary door and hardware schedule, showing the quantity , quality levels, and hardware type.
- (h) Playground equipment specifications and layout. (elementary school only).

- (i) 90% complete site plan, including grading, drainage, site utility connections, site amenities, and landscape features, including landscape irrigation system design.
- (j) Preliminary development of details and large-scale blowups.
- (k) Final building elevations.
- (l) Legend showing all symbols used on drawings.
- (m) Reflective ceiling development, including ceiling grid, light fixtures, HVAC outlets, and ceiling accesses.
- (n) Outline specifications.

2. *Structural:*

- (a) Plan drawings, with all structural members located and sized.
- (b) Footing, beam, column, and connection schedules.
- (c) Outline specifications.
- (d) Foundation drawings.

3. *Mechanical:*

- (a) Heating and cooling load calculations for each space and major duct or pipe runs sized to interface structural.
- (b) Major mechanical equipment schedule, indicating size and capacity.
- (c) Mechanical equipment and ductwork sections and details.
- (d) Devices in ceiling located.
- (e) Duct work and piping substantially located and sized.
- (f) Legend showing all symbols used on drawings.
- (g) Plumbing equipment schedules.

- (h) Plumbing floor plans logically sequenced, showing equipment, fixtures to 5'0" beyond exterior face of building.
- (i) Standard plumbing details and other necessary details.
- (j) Outline specifications.

4. *Electrical:*

- (a) All power consuming equipment and load characteristics.
- (b) Total electric load.
- (c) Major electrical equipment (switchgear, distribution panels, emergency generator, transfer switches, UPS system, etc.), dimensioned and drawn to scale into the space allocated.
- (d) Complete preliminary site electrical distribution and lighting design.
- (e) One-line power system diagram.
- (f) One-line special systems diagrams.
- (g) Outline specifications.
- (h) Lighting, power, telecommunications, and office automation devices and receptacles, low-voltage systems including data, security, fire alarm, CATV, and intercom, shown in plan.
- (i) Final light fixture schedule.
- (j) Interior electrical loads estimate for systems furniture, receptacles, lighting, food service equipment, and any other special use areas, etc.

5. *Food service:*

- (a) Food service floor plan, showing kitchen equipment locations and outline specifications.

6. *Construction cost estimate:*

- (a) In greater detail than the schematic phase, with all components described in C.S.I. format.

P-5. CONSTRUCTION DOCUMENTS PHASE:

- a. Upon written authorization from the District to proceed, the Architect shall, from the approved Design Development Documents, prepare Working Drawings and Specifications setting forth in detail the requirements for the construction of the entire Project as defined in this agreement. The District will provide the Conditions of the Contract (general and any supplementary), Advertisement for Bids, Instructions to Bidders, time-control specification provisions, and Construction Proposal Forms and Agreement(s), which the Architect shall incorporate into the Construction Documents.
- b. The final documents shall incorporate the District's constructability and other review comments and any modifications and changes desired by the District and any modifications required for compliance with all applicable codes, regulations, standards, the approved program, and prior written approvals and instructions by the District. The resulting final construction document submittal is to be a complete, fully coordinated, integrated package, suitable for bidding distribution, without significant addenda or further clarification required.
- c. Construction Documents shall be packaged and completed in accordance with the Schedule.
- d. Detailed drawings shall cover all work included in the Project or designated portion thereof.
- e. Single or multiple contracts and the detailed drawings for each contract shall be prepared by the Architect, with appropriate designation noted thereon.
- f. Specifications shall be prepared using the Construction Specifications Institute 16 division format.
- g. The Architect shall provide the Project Manager periodically with copies of in-progress Construction Documents during this phase. Additionally, the Architect shall submit for approval by the District ten (10) sets of preliminary Construction Documents at the stage of 95% completeness.

- h. After review and approval of the 95% Construction Documents by the District, the Architect shall continue with preparation of final Construction Documents and Bid Documents, including final Specifications for all authorized work on the Project, and shall incorporate in those final documents the comments and modifications and changes desired by the District and any modifications required for compliance with all applicable codes, regulations, standards, the approved program, and prior written approvals and instructions by the District. The resulting final Construction Document submittal is to be a complete, fully coordinated, integrated package suitable for bidding distribution and construction.
- i. The Architect shall participate in such reviews and meetings as are necessary to establish that the project design conforms to all applicable codes and all requirements of responsible agencies and will make any changes to the Construction Documents that are required for issuance of all permits and legal authorizations needed to construct the Project.
- j. The construction cost estimate shall be in greater detail than Design Development phase, to permit review of all work items included in the Project.
- k. The Architect shall receive Additional Services compensation for any alternates designed that are in excess of 5% over the CCAP as determined by the bid receiving contract award.
- l. The Contract Document drawings shall be prepared using the latest version of Auto CADD for DOS-based computers. Specifications shall be produced using Microsoft Word or approved, for DOS-based computers. Diskettes of the Contract Documents shall be submitted to the District at the commencement of the Bid/Award Phase and at the completion of Record Drawings.
- m. It is understood and agreed that the calculations, drawings, and specifications prepared pursuant to this Agreement, whether in hard copy or machine-readable form, are instruments of professional service intended for one-time use in the construction of this project. The District may retain copies, including copies stored on magnetic tape or disk, for information and reference in connection with the occupancy and use of the project, including alterations thereto, expansions thereof, and maintenance of the facility.

- n. Because of the possibility that information and data delivered in machine-readable form may be altered, whether inadvertently or otherwise, the Architect reserves the right to retain the original tapes/disks and to remove from copies provided to the District all identification reflecting the involvement of the Architect in their preparation. The Architect also reserves the right to retain hard-copy originals of all project documentation delivered to the District in machine-readable form, which originals shall be referred to and shall govern in the event of any inconsistency between the two.
- o. The District is informed by the Architect that the automated conversion of information and data from the system and format used by the Architect to an alternate system or format cannot be accomplished without the introduction of inexactitudes, anomalies, and errors. In the event project documentation provided to the District in machine-readable form is so converted, the District agrees to assume all risks associated therewith.
- p. The District recognizes that changes or modifications to the Architect's instruments of professional service introduced by anyone other than the Architect may result in consequences that the Architect can neither predict nor control, and the District agrees to assume all risks associated with such changes or modifications.

P-6. CONSTRUCTION BID/AWARD PHASE:

- a. After receiving written authorization from the District, the Architect shall proceed with the Construction Bid/Award Phase. There may be more than one Construction Bid/Award Phase.
- b. The Architect shall prepare such clarifications and addenda to the bidding documents as may be required. The Architect will provide these to the District.
- c. The Architect will evaluate substitutions proposed by the Contractor and make subsequent revisions to Drawings, Specifications, and other documentation resulting therefrom.
- d. The Project Manager will schedule and conduct a Prebid Conference for each construction contract with prospective bidders, to review the Project requirements. The Architect shall provide knowledgeable representatives, including representatives of its consultants, to participate in these conferences to explain

and clarify Bidding Documents. Within three (3) days after the Prebid Conference the Architect shall deliver to the District, if needed, an Addendum addressing items requiring clarification or modification of the Contract Documents.

- e. The Architect shall assist the Project Manager and the District in obtaining or evaluating bids or negotiating proposals and preparing recommendations for the District concerning the contract award.
- f. Should first bidding or negotiation produce prices in excess of the approved CCAP, the Architect shall participate with the Project Manager in such rebidding, renegotiation, and redesign, at no additional expense to the District, as may be necessary to obtain price(s) within the approved CCAP or price(s) acceptable to the District. The District will assist in reducing project scope or quality, and/or redesign decisions, as necessary to reduce the project cost. All redesign and scope reduction must be approved by the District, which approval will not be unreasonably withheld.
- g. Should the Architect redesign or conduct rebidding under its responsibilities set out in the preceding paragraph, its Construction Phase and Post-Construction Phase services shall be extended to take redesign/rebid delays into account, at no additional expense to the District.
- h. The Architect shall assist the Project Manager in the preparation of the Agreement(s) between the District and the Contractor(s) for the District's execution. The Project Manager will coordinate award(s) and Notice(s) to Proceed for the District.

P-7. CONSTRUCTION PHASE:

- a. The Construction Phase for each portion of the Project will commence with the award of the Construction Contract and will terminate when the Substantial Completion payment is made by the District.
- b. The Architect shall consult with the Project Manager and the District and shall participate in all decisions as to the acceptability of subcontractors and other persons and organizations proposed by the Contractor for various portions of the work.

- c. The Architect shall review shop drawings, samples, and other submissions of Contractor(s) as well as the Work performed by the Contractor(s) for conformance with the design concept of the Project and for compliance with the Contract Documents. The review and return of submittals shall be accomplished by the Architect within fourteen (14) calendar days from date of receipt except when authorized by the Project Manager.
- d. The Architect shall review and approve or take other appropriate action upon Contractor's submittals such as Shop Drawings, Product Data, and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect's action shall be taken with such reasonable promptness as to cause no delay in the work or in the construction of the owner or of separate contractors, allowing sufficient time, in the Architect's professional judgment, to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities or for substantiating instructions for installation or performance of equipment or systems designed by the Contractor, all of which remain the responsibility of the Contractor to the extent required by the Contract Documents. The Architect's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Architect, of construction means, methods, techniques, sequences, or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component. When professional certification of performance characteristics of materials, systems, or equipment is required by the Contract Documents, the Architect shall be entitled to rely upon such certification to establish that the materials, systems, or equipment will meet the performance criteria required by the Contract Documents.
- e. The Project Manager will establish with the Architect procedures to be followed for review and processing of all shop drawings, catalog submissions, Project reports, test reports, maintenance manuals, and other necessary documentation, as well as requests for changes and applications for extensions of time.
- f. The Architect shall, when requested by the Project Manager, prepare Proposal Request documentation.

- g. The Architect shall render to the Project Manager, within three (3) working days unless otherwise authorized by the Project Manager, whose authorization will not be unreasonably withheld, interpretations of requirements of the Contract Documents (R.F.I.'s). The Architect shall make all interpretations consistent with the intent of and reasonably inferable from the Contract Documents. The Architect's decision in matters relating to artistic effect shall be final if consistent with the intent of the Contract Documents.
- h. Should errors, omissions, or conflicts in the drawings, specifications, or other Contract Documents by the Architect be discovered, the Architect will prepare and submit to the Project Manager, within three (3) working days unless otherwise authorized by the Project Manager, whose authorization will not be unreasonably withheld, such amendments or supplementary documents and provide consultation as may be required, for which the Architect shall make no additional charges to the District.
- i. The Project Manager, as the exclusive representative of the District throughout this Contract, shall be the single point of contact with any and all Contractors, except when the Project Manager or the District shall direct the Architect otherwise. All instructions to the Contractor(s) shall be issued by and through the Project Manager except when the Architect is directed otherwise by the Project Manager.
- j. The Architect will have access to the Work at all times. All site visits, observations, and other activities by the Architect shall be coordinated through the Project Manager.
- k. The Architect and its consultants (including, but not limited to, the structural, mechanical, and electrical disciplines) shall make such periodic visits to the Project site as may be necessary to familiarize themselves generally with the progress and quality of the Work and to determine in general if the Work is proceeding in accordance with the Contract Documents. On the basis of such on-site observations, if the Architect observes any work that does not conform to the Contract Documents, the Architect shall promptly make an oral and written report of all such observations to the Project Manager. The Architect and its consultants shall not be required to make exhaustive or full-time on-site observations to check the quality or quantity of the Work, but shall make as many observations as may be reasonably required to fulfill their obligations to the District. The Architect shall not

have control over or charge of and shall not be responsible for construction means, methods, techniques, sequences or procedures, or safety precautions and programs in connection with the Work, and shall not be responsible for the Contractor's failure to carry out the Work in accordance with the Contract Documents.

- l. Periodic visits of the Architect shall be not less than once weekly, timed to coincide with the weekly construction progress meeting with the Contractor. Each engineering discipline shall make visits timed to coincide with the work applicable to its discipline. During critical work phases, each engineering discipline may be required to make visits timed to coincide with the construction progress. The engineering disciplines shall prepare and submit a report on each visit, submitted via the Architect to the Project Manager within three (3) working days of the visit.
- m. The Architect shall render written field reports relating to the periodic visits and observations of the Project required by Paragraph k (above) within three (3) working days to the Project Manager in the form required by the Project Manager.
- n. Based upon observations at the site and upon the Contractor's applications for payment, the Project Manager and Architect shall determine the amount owing to the Contractor(s) pursuant to the terms of the District/Contractor Agreement. The Project Manager shall consult with the Architect in the determination of the amount due the Contractor, and the Architect shall sign the Certificate of Payment prior to the time it is transmitted to the District by the Project Manager.
- o. The Architect's signing of a Certificate of Payment shall constitute a representation by the Architect to the District, based upon the Design Architect's observations at the site and the data constituting the Application for Payment, that the Work has progressed to the point indicated, that to the best of the Architect's knowledge, information, and belief the quality of the Work appears to be in accordance with the Contract Documents (subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, the results of any subsequent tests required by the Contract Documents, minor deviations from the Contract Documents correctable prior to completion, and to any specific qualifications stated in the Certificate for Payment) and that the Contractor is entitled to payment in the amount certified. However, if it should later be

found that the Contractor has failed to comply with its contract with the District in any way or detail, such failures and subsequent compliance shall be the sole responsibility of said Contractor. By signing a Certificate for Payment to the District, the Architect shall not be deemed to represent that it has made any examination to ascertain how and for what purpose the Contractor has used the monies paid on account of the Construction Contract Sum.

- p. If, in accordance with its duty, the Architect advises the Project Manager of nonconforming work as stated in Paragraph k., the Architect shall confirm the nonconformance in writing to the Project Manager within three (3) days of observation.
- q. The Architect, and Project Manager through the Architect, shall have the authority to reject work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable for implementation of the intent of the Contract Documents, the Architect will have authority to require additional inspection or testing of the work in accordance with the provisions of the Contract Documents, whether or not such work is fabricated, installed, or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, subcontractors, material and equipment suppliers, their agents or employees, or other persons performing portions of the work.
- r. The Architect shall assist in obtaining governing agency occupancy approval if any exceptions arise related to the design or specified materials.
- s. When the Contractor provides notification that the Work or portions of the Work are substantially complete, the Architect and its consultants shall review the Work or portions of the Work and prepare and submit to the Project Manager punchlists of the Work of the Contractor(s) that is not in conformance with the Contract Documents. The Project Manager shall transmit such punchlists to the Contractor(s). Substantial Completion will be defined to mean the date certified by the Architect and Project Manager when the work has sufficiently progressed, in accordance with the Contract Documents, so the District can fully occupy and utilize the Work or designated portion thereof for the use intended, with all parts and systems operable as required by the Contract Documents, and where all work is complete,

accessible, operable, and usable by the District. Only incidental corrective work under “punchlists” and final cleaning, (if required beyond cleaning needed for the District’s full use), may remain for Final Completion. The District may request that the Architect inspect and prepare a punchlist on any portion of the Work.

- t. The Architect shall assist the Project Manager in preparing Change Orders and Construction Change Directives, with supporting documentation and data if deemed necessary by the Architect for the District’s approval and execution in accordance with the Contract Documents, and may authorize minor changes in the Work not involving any adjustments in the Contract Sum or an extension of the Contract Time that are not inconsistent with the intent of the Contract Documents.

P-8. POST-CONSTRUCTION PHASE:

- a. The Post Construction Phase will commence upon the issuance of the Substantial Completion Certificate and shall be completed upon the expiration of the guarantee/warranty period.
- b. The Architect shall prepare a set of reproducible, mylar record prints of drawings showing significant changes in the Work made during the construction process, based on neatly and clearly marked-up contract drawings, prints, and other data furnished by the Contractor(s) and the applicable Addenda, Clarifications, and Change Orders that have occurred during the Project. These record documents (as-builts) shall be completed and delivered to the District no later than thirty (30) days after receipt from the Contractor.
- c. The Architect shall provide assistance in the original operation of any equipment or system, such as initial start-up, testing, adjusting, and balancing.
- d. The Architect and/or its consultants shall observe and review test data of the original operation of any equipment or system, such as initial start-up testing, adjusting, and balancing to make sure that all equipment and systems are properly installed and functioning in accordance with the design and specifications.
- e. The Architect shall review the Contractor-furnished maintenance and operating instructions, schedules, guarantees, bonds, and certificates of inspection as required by the Construction Documents and forward all approved copies to the Project

Manager for use by the District. In addition, the Architect shall conduct such observations as necessary to ensure that all material and equipment warranties are in compliance with applicable specifications.

- f. The Architect and its consultants shall conduct up to two (2) comprehensive Final Completion inspections per construction contract, at the request of the District. If more than two (2) Final Completion inspections are required, through no fault of the Architect, the additional inspections shall be deemed additional services.
- g. Upon correction of the deficiency reports (punchlists), and acceptance of all other close-out submittals and certificates of the Contractor, the Project Manager and the Architect shall approve the Application for Final Payment and forward it to the District for execution.
- h. The Architect and its consultants shall conduct an inspection of the Project ten (10) working days prior to warranty expiration and shall provide to the District a written report specifying any warranty deficiencies that may exist.

Q. ADDITIONAL SERVICES

- Q-1. Any Additional Services must be authorized in advance by the District in writing; the Architect shall furnish or obtain from others the authorized services. The Architect shall be paid for these additional services by the District as herein provided to the extent they exceed the obligations of the Architect under this Agreement. Examples of potential additional services are as follows:
 - a. Providing financial feasibility or other special studies.
 - b. Providing planning surveys or alternative site evaluations.
 - c. Providing design services relative to future facilities, systems and equipment that are not intended to be constructed as part of the Project, other than general planning and Master Planning for future work as indicated by the Program of Requirements.
 - d. Making major revisions in Drawings, Specifications, or other documents when such revisions are inconsistent with written approvals or instructions previously given by the District or are

due to causes beyond the control and without the fault and negligence of the Architect or its consultants or agents.

- e. Preparing supporting data and other services in connection with any District-initiated change order if the Basic Compensation is not commensurate with the services required of the Architect.
- f. Providing operating and maintenance manuals, training personnel for operation and maintenance, and consultation during operations other than initial start-up.
- g. Providing soils sampling, classification, and analysis; however, analysis of existing soils information and soils analysis during the Design Phase and recommendations needed during the Construction Phase of the Project are not considered additional services.
- h. Preparing to serve or serving as an expert witness for the District in connection with any public hearing, arbitration proceeding, or legal proceeding; however, preparing to serve or serving as a fact witness for the District or rendering testimony necessary to secure governmental approval of zoning or land-use clearances for the Project shall not constitute an additional service.
- i. Providing professional services made necessary by the default of a Contractor or by major defects in the Work of the Contractor in the performance of the Construction Contract.
- j. Providing surveying services such as platting, mapping, subdivision agreements, or recording subdivision plats.
- k. Providing additional or extended services during construction made necessary by (a) defective work of the Contractor; (b) prolongation of the Construction Contract time by more than 90 days, provided the prolongation is not due to the fault or negligence of the Architect or its employees, consultants, or agents; and (c) default under the Construction Contract due to delinquency or insolvency.
- l. Providing more than two (2) complete Substantial Completion (punchlist) inspections attended by all disciplines and more than two (2) follow-up inspections to determine Final Completion, per Construction Contract.

- m. Providing additional services and costs necessitated by out-of-town travel required of the Architect and approved by the District other than visits to the Project and other than for travel required to accomplish the Basic Services.
- n. Providing any other services not otherwise included in this Agreement or not customarily furnished in accordance with generally accepted architectural practices consistent with the terms of this Agreement.
- o. Providing design and engineering of any work outside the property line.
- p. Providing any services after completion of the Post-Construction phase as defined in Paragraph P-9.a.
- q. Providing services in connection with evaluating substitutions proposed by the Contractor once under construction and making subsequent revisions to the Drawings, Specifications, and other documentation resulting therefrom.
- r. Providing consultation concerning replacement of Work damaged by fire or other causes during construction, and furnishing services required in connection with the replacement of such work.
- s. Providing services made necessary by the default of the Contractor, by major defects or deficiencies in the Work of the Contractor, or by failure of performance of either the District or the Contractor under the Construction Contract.
- t. Providing services in evaluating an extensive number of claims, not related to any Architect's design errors and omissions, submitted by the Contractor or others in connection with the work.
- u. Preparing documents for alternate, separate, or sequential bids or providing services in connection with bidding, negotiation, or construction prior to the completion of the Construction Documents Phase except as outlined in Paragraph C-1.a.
- v. Providing special surveys, environmental studies, and submissions required for approvals of governmental authorities or others having jurisdiction over the Project.

- w. Providing services to extensively investigate existing conditions or facilities or to make measured drawings thereof.
- x. Providing services to verify the accuracy of drawings or other information furnished by the District.
- y. Providing detailed quantity surveys or inventories of materials, equipment, and labor.
- z. Providing analyses of owning and operating costs.
- aa. Providing interior design and other similar services required for or in connection with the selection, procurement, or installation of furniture, furnishings, and related equipment.
- bb. Providing services of consultants other than provided as a part of Basic Services.

R. TIME OF ESSENCE

R-1. Time is of the essence hereof.

R-2. IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement at a legally convened meeting of the Governing Board of [District Name] this _____ day of _____, 2001.

[_____]

By: _____
Superintendent

ARCHITECT

By: _____